

83-290

No.

FILED
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In The
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

LOTTIE MAE IVY

Petitioner,

v.

NATCHITOCHES PARISH SCHOOL BOARD
and
LEVI J. THOMPSON

Respondents,

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT AND TO THE
COURT OF APPEAL, THIRD CIRCUIT,
STATE OF LOUISIANA

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QUESTION PRESENTED

Should a writ of certiorari be granted to review the decision of a state court which, in essence, denied petitioner's claim that she was denied the constitutional guaranty of equal protection of the law, as reflected in the applicable decisions of this Honorable Court, wherein petitioner was discharged from tenured employment ostensibly based upon a state statute, fair on its face, when that same state statute has not been equally applied to others similarly situated, nor has there been a rational justification for the differential treatment?

PARTIES TO THE PROCEEDING

The caption of the case in this Honorable Court contains the names of all parties.

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3. Constitution of the State of Louisiana of 1974, Article 1,
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17:493..... 6, 13

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OPINIONS BELOW

The opinion of the Louisiana Supreme Court (App. 1) is reported at 433 So.2d 180.

The opinion of the Court of Appeal, Third Circuit, State of Louisiana, (App. 2), is reported at 428 So.2d 1332.

JURISDICTION

The judgment of the Louisiana Supreme Court was entered on May 23, 1983. This Court has jurisdiction under 28 U.S.C.A. 1257(3).

CONSTITUTIONAL PROVISIONS

Constitution of the United States, Amendment XIV, Section 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Constitution of the State of Louisiana of 1974, Article 1, Section 3:

"No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or

unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case of punishment for crime."

Constitution of the State of Louisiana of 1974, Article 1, Section 22:

"All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights."

STATUTORY PROVISIONS

Louisiana Revised Statute 17:492:

Each school bus operator shall serve a probationary term of three years reckoned from the date of his first employment in the parish in which the operator is serving his probation. During the probationary term the parish school board may dismiss or discharge any operator upon the written recommendation of the parish superintendent of schools accompanied by valid reasons therefor.

Any school bus operator found unsatisfactory by the parish school board at the expiration of the probationary term shall be notified in writing by the board that he has been discharged or dismissed; in the absence of such notification such probationary school bus operator shall automatically become a regular and permanent operator in the employ of the school board of the parish in which he

has successfully served his probationary term; provided that all school bus operators in the employ of any parish school board on July 26, 1944, and who have served satisfactorily as school bus operators for more than three consecutive years and who shall be employed for the school term of 1944-45, are declared to be regular and permanent school bus operators in the employ of the school board of that parish.

In order to acquire tenure under the provisions hereof, each school bus operator shall personally operate and drive the school bus he is employed to operate; no one shall acquire tenure in the operation of more than one school bus."

Louisiana Revised Statute 17:493:

"A permanent school bus operator shall not be removed from his position except upon written and signed charges of willful neglect of duty, or incompetence, or

immorality, or drunkenness while on duty, or physical disability to perform his duties, or failure to keep his transfer equipment in a safe, comfortable and practical operating condition, or of being a member of or contributing to any group, organization, movement or corporation that is prohibited by law or injunction from operating in the state of Louisiana, and then only if found guilty after a hearing by the school board of the parish in which the school bus operator is employed. An additional ground for the removal from office of any permanent school bus operator shall be the abolition, discontinuance or consolidation of routes, but then only if it is found as a fact, after a hearing by the school board of the parish, that it is in the best interests of the school system to abolish, discontinue, or consolidate said route or routes. All hearings

hereunder shall be private or public, at the option of the operator or operators to be affected thereby. At least fifteen days in advance of the date of the hearing the school board shall furnish the affected operator or operators a copy of the written grounds on which said abolition, discontinuance or consolidation of routes is sought. The operator or operators affected shall have the right to appear in their own behalf and with counsel of their selection, and be heard by the board at the hearing. Nothing therein shall impair the rights of the parties to appeal to a court of competent jurisdiction.

In the event that one or more school bus operators must be removed due to the abolition, discontinuance or consolidation of routes, the principle of seniority shall apply, so that the last school bus operator hired to serve within the

school system to be affected shall be
the first to be removed."

STATEMENT OF THE CASE

Petitioner, Lottie Mae Ivy, was formerly employed by respondent, Natchitoches Parish School Board, as a tenured school bus driver which she began in 1957. During the latter part of her employment, she became involved in a dispute with her employer through respondent Levi J. Thompson, Superintendent, over past due wages. Subsequently, she was involved in an accident on October 16, 1981 when her bus which she was driving was broad-sided by a truck. She was then brought up on charges of "incompetence" before the School Board in March, 1982. There were no serious injuries sustained in the accident. Petitioner had never been involved in any other accidents in her 24 years of employment. Petitioner was not prosecuted as a result of the accident. Petitioner had been issued a Certificate of Completion of a Defensive Driving Course 2 months earlier, as well as in 1975. Petitioner

held a valid Louisiana chauffeur's license with no restrictions. Following the "hearing," petitioner was summarily discharged.

Petitioner then proceeded to seek judicial review of her dismissal. The trial court sustained the decision of the School Board. An appeal was then taken to the Court of Appeal, Third Circuit, State of Louisiana. In a 2-1 decision, the trial court judgment was sustained (App. 2). Petitioner thereupon sought a writ of certiorari or review of the Louisiana Supreme Court. Application was denied, with one Justice dissenting. (App. 1).

During the time frame encompassed in the foregoing sequence of events since her dismissal, petitioner had been made aware of the disturbing fact that other drivers employed by the School Board have been involved in accidents, yet the severe treatment which was inflicted upon her, i.e. discharge from employment, has not been applied in an equal and just manner by the School Board. In fact, she now knows of at least 10 other such

instances where no discharge occurred on facts similar to her situation. In essence, petitioner was not afforded the equal protection of the laws. Petitioner set forth this question of law in her application for writ of certiorari or review to the Louisiana Supreme Court, the pertinent part appended hereto for sake of brevity (App. 3). As noted hereinabove, this application was denied with one Justice dissenting (App. 1).

ARGUMENT

Petitioner was a tenured school bus driver, employed by the respondent Natchitoches Parish School Board ("School Board"), pursuant to the provisions of Louisiana Revised Statute 17:492. Tenured school bus drivers may be removed from their position only for certain specified reasons, after hearing, pursuant to the provisions of Louisiana Revised Statute 17:493. Superimposed on these particular laws, however, is the mandate of the 14th Amendment to the United States Constitution which provides, in particular part, that "No State. . . shall deny to any person within its jurisdiction the equal protection of the laws." Likewise, the Louisiana Constitution of 1974, Article 1, Section 3, provides in pertinent part, that "No person shall be denied the equal protection of the laws;" and, in Article 1, Section 22, that "All courts shall be open, and every person shall have

an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights."

Equal protection of the laws is not limited solely to those situations which call into question whether certain legislation is fair and impartial on its face, but extends to the question of whether certain legislation is applied fairly and impartially.

As a matter of federal law, a state court which decides in conflict with the equal protection mandate is equally in conflict with the decisions of this Honorable Court construing that same provision. Yick Wo v. Hopkins, 118 U.S. 356, 373-74, 6 S.Ct. 1064, 1073, 30 L.Ed. 220 (1886).

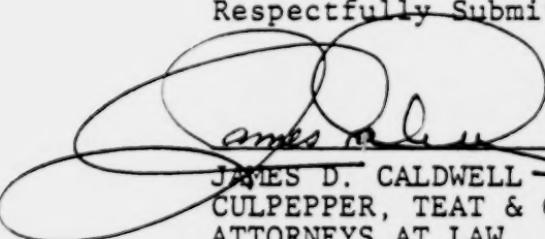
In the case at bar, the Louisiana Supreme Court, in essence, rejected petitioner's claim that the state legislation

in question was not applied fairly and impartially. Conversely, it is a blatant violation of equal protection to have dismissed petitioner under the pretext of "incompetence" based upon a facially fair and impartial statute, when others similarly situated have not been so egregiously treated. As such, it was not reasonable for the respondents to have done so, nor are any facts present to rationally justify the action taken under the discriminatory factors present. This is not a situation involving mere error of judgment on the part of respondents. Intent, which can be inferred from the circumstances, is evident from the unequal treatment provided petitioner.

The actions of respondents were arbitrary and capricious. There is no other plausible explanation for what occurred, based upon the facts, other than petitioner was discharged because she contested her right to certain past due wages. The fact of the

the accident was a stroke of luck for the respondents, secondary to the real reason for dismissal, and was seized upon by respondents to get rid of a troublesome problem. Without the intervention of this Honorable Court, a terrible and unjust tool of coercion will be left in the hands of the respondents. The message will be clear: any employee who dares question the absolute authority and decisions of respondents may suffer the same fate of petitioner. Neutral legislation can not be applied in an unequal manner. Surely this state of events merits this Honorable Court's attention.

Respectfully Submitted,



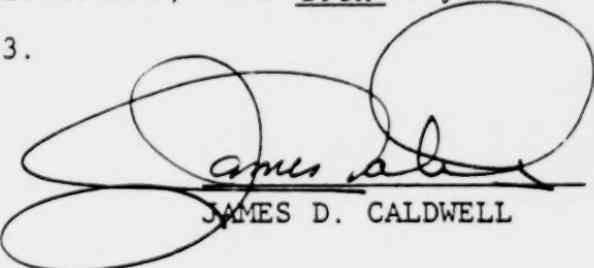
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been mailed this date, postage prepaid to counsel of record for respondents, Mr. Eric R. Harrington, Post Office Box 233, Natchitoches, Louisiana.

Jonesboro, Louisiana, this 19th day of August, 1983.



JAMES D. CALDWELL

A P P E N D I X

THE SUPREME COURT OF THE STATE OF LOUISIANA

LOTTIE MAE IVY

VERSUS

No. 83-C-0774

NATCHITOCHES PARISH SCHOOL BOARD
AND LEVI J. THOMPSON

- - - - -

In Re: Lottie Mae Ivy applying for Writ of
Certiorari or Review to the Court
of Appeal, Third Circuit, No.
82-651; 10 th Judicial District
Court, Parish of Natchitoches,
No. 50,560.

- - - - -

May 23, 1983

Writ denied.

FAB

JAD

PFC

WFM

JCW

HTL

DENNIS, J., would grant the writ

Supreme Court of Louisiana
May 23, 1983

S/ Frank J. Labranche, Jr.
Clerk of Court
For the Court

Lottie Mae IVY,
Plaintiff-Appellant,

v.

NATCHITOCHES PARISH SCHOOL BOARD
and Levy J. Thompson,
Defendants-Appellees.

No. 82-651.

Court of Appeal of Louisiana,
Third Circuit.

March 9, 1983.

Before FORGET, CUTRER and KNOLL, JJ.

CUTRER, Judge.

This appeal involves the review of a decision by a local school board to terminate a tenured bus driver. Lottie Mae Ivy was terminated by the Natchitoches Parish School Board (School Board) after a public hearing concerning Ivy's involvement in an intersectional accident while driving a fully loaded school bus. The accident occurred in Campti, Louisiana, at the intersection of U. S. Highway 71 and Bordelon Street. The intersection is controlled by a

flashing light, red for Ivy on Bordelon Street, yellow for the truck being driven along Highway 71. Ivy filed a petition in the district court for a writ of mandamus seeking reinstatement and back pay. The trial court rendered judgment dismissing Ivy's suit. Ivy appeals. We affirm.

The issues presented in this appeal are as follows:

- (1) Whether the School Board's decision is supported by substantial evidence or whether the School Board abused its discretion; and
- (2) Whether Ivy's involvement in this one accident could be grounds for discharge for incompetence under LSA-R.S. 17:493.

LAW

This court has previously been faced with reviewing the termination of a school bus driver by a local school board. In

Allen v. LaSalle Parish Sch. Bd. 341 So.2d 73, 75 (La.App. 3rd Cir. 1976), writ den., 343 So.2d 203 (La. 1977), we said:

"The jurisprudence of our state is abundantly clear that where an administrative agency or hearing body is the trier of fact the courts will not review the evidence before such body except for the following limited purposes: (1) to determine if the hearing was conducted in accordance with the authority and formalities of the statute; (2) to determine whether or not the fact findings of the body were supported by substantial evidence; and, (3) whether or not the hearing body's conclusions from the factual findings were arbitrary or constituted an abuse of the hearing body's discretion. Stewart v. East Baton Rouge Parish School Board, 251 So.2d 487 (La.App. 1st Cir. 1971); Moffett v. Calcasieu Parish School

Board, 179 So.2d 537 (La.App. 3rd Cir. 1965): Barber vs. Lake Charles Pipe and Supply Company, 148 So.2d 326 (La.App. 3rd Cir. 1962).

"We consider the record before us in light of this well established rule.

"Under the provisions of the school bus operators' tenure law, a school board, complying with the requirements therein, has the discretionary authority to dismiss a school bus driver for conduct which amounts to incompetency or willful neglect of duty. LSA-R.S.

17:493 provides in pertinent part as follows:

' A permanent school bus operator shall not be removed from his position except upon written and signed charges of willful neglect of duty, or incompetence, or immorality, or drunkenness while on duty, or physical disability to perform his duties, or failure to keep his transfer equipment in a safe comfortable and practical operating condition, or of being a member of or contributing to any group, organization, movement or corporation that is prohibited by law or injunction from operating

in the State of Louisiana, and then only if found guilty after a hearing by the school board of the parish in which the school bus operator is employed..... All hearings hereunder shall be private or public, at the option of the operator or operators to be affected thereby ... The operator or operators affected shall have the right to appear in their own behalf and with counsel of their selection, and be heard by the board at the hearing. Nothing herein shall impair the right of the parties to appeal to a court of competent jurisdiction. '"

A review of the record reflects that the School Board complied with all of the procedural formalities required by the statute. Ivy received written charges alleging specifically the incidents upon which the Board would base their decision including the accident in question. Ivy appeared at the scheduled hearing accompanied by an attorney of her choice. Ivy was allowed to present her own witnesses and cross-examine the School Board's witnesses. Ivy's rights under the statute have been protected.

Next we must determine whether the trial court was clearly wrong when it decided that

the School Board had before it substantial evidence to support its findings of incompetency.

FACTS

A review of the record discloses the following facts: This is an intersectional collision. The favored road, Highway 71, was controlled by a flashing yellow light; the speed limit on Highway 71 was 55 miles per hour; Highway 71 runs north and south. Bordebon Street, the cross street, is controlled by a flashing red light and runs east and west. Ivy approached the intersection from the west and, after stopping, made a left, northbound, turn in front of Calvin Deason who was traveling north on Highway 71.

Deason testified that he saw the school bus stopped at the intersection. As he approached the intersection the bus pulled out directly in front of him. Deason sounded his horn and, in an attempt to avoid the bus, swerved his truck as far to the

right as possible. Deason's truck was fully loaded with large logs at the time. The left front of Deason's truck hit the rear portion of Ivy's bus. Deason's truck continued past the bus, through a ditch, and was severely damaged as it struck a large tree and overturned. Because of Deason's evasive action a disaster was probably avoided. Of the 46 children aboard the bus 17 complained of bruises but none were seriously injured.

Deason testified that he was familiar with the intersection and knew of other accidents which had occurred at that site. Accordingly, he was driving only about 40 miles per hour as he approached Bordelon Street. Several other witnesses corroborated Deason's estimate. There were no obstructions to Ivy's view as she looked south down Highway 71 from the Bordelon Street intersection. Ivy admitted at the School Board hearing and in the district court that she was stopped at the intersection, she saw

Deason's truck approaching from the south.

Ivy contended that she had made the turn and was approximately 150 feet north of the intersection when the bus was struck by the log truck. Deason stated that he hit the bus as it was approximately 10 to 15 feet north of the intersection. There was other testimony that the impact occurred at the intersection.

The School Board apparently concluded that the accident occurred at the intersection and was caused by the failure of Ivy to yield the right-of-way to the truck.

The trial court had before it the transcript of the School Board hearing and also heard several of the same witnesses. While there was some conflict in the testimony as to the occurrence of the accident, as we have previously pointed out, the School Board apparently accepted the testimony of Deason, the truck driver, and the witnesses who supported his version of the accident. This testimony clearly shows that Ivy, by

her negligent actions in operating the bus endangered the lives of the children.

The trial court specifically found that the Natchitoches Parish School Board had good and sufficient grounds for its decision. In view of the facts as set forth herein, we find that the trial court was not clearly wrong in that determination.

Ivy seeks to make an issue of the fact that the School Board charged her with a "pattern of incompetence" when it sent her a list of eight incidents and then only the most recent was discussed at the hearing. There is no merit to the argument that a single incident cannot be sufficient grounds for a finding of incompetence. The statute does not require a certain number of transgressions to equal incompetence. The Allen case, *supra*, involved an isolated altercation between a bus driver and two brothers. For his conduct in that incident, Mr. Allen was terminated. Given the great responsibility

that a bus driver assumes when he or she undertakes to transport children, certainly we cannot suggest that a School Board must wait until a driver has negligently jeopardized the lives of his passengers in a second or third accident before removing that driver. We find no error in these proceedings. The judgment of the trial court will be affirmed.

For the foregoing reasons, the judgment of the district court is affirmed. All costs of this appeal are to be paid by plaintiff-appellant, Lottie Mae Ivy.

AFFIRMED.

FORGET, J., dissents and will assign reasons.

FORGET, Judge, dissenting.

I find that I cannot agree with my brother and sister who affirmed the trial court judgment, which had in turn affirmed the decision of the Natchitoches Parish School Board terminating the employment of the

plaintiff.

As far as the record before us shows, plaintiff, a tenured bus driver of some twenty-five years of service, was terminated for being involved in a single accident involving her bus. I cannot agree with the majority that one single, relatively minor, injury-wise, accident constitutes "incompetence" and is sufficient grounds for termination of tenured employment under R.S. 17:943. I do not believe that this is the spirit nor the letter of the statute.

There was no attempt by the School Board to show a pattern of events from which it could deduce that plaintiff was an incompetent school bus driver. In my opinion, the term "incompetence" means considerably more than what was involved herein. The Allen case relied on by the School Board and the majority herein, involved an intentional act of the school bus driver wherein he lost his temper and corporally disciplined,

in violation of regulations, two brothers who were passengers on his bus. It did not involve a mere matter of possible negligent operation of his bus.

The punishment imposed by the School Board in this particular case seems to me to be unreasonably harsh and arbitrary in the absence of other extenuating circumstances which, if there were any, are not part of this record.

I respectfully dissent.

(WRIT OF CERTIORARI OR REVIEW
TO THE LOUISIANA SUPREME COURT,
PAGE 12)

Furthermore, there is a compelling reason why the Court should review this case and settle the meaning of the term "incompetence" under the School Bus Drivers Tenure Law. Since the action of the SCHOOL BOARD in dismissing MRS. IVY, several other school bus drivers have been involved in accidents in Natchitoches Parish while driving their school buses loaded with children. Some injuries to the children have even occurred. Yet, the SCHOOL BOARD has not seen fit to dismiss any of those driver. If the term "incompetence" is left to mean involvement in one accident, without regard to the previous driving record of the driver, and without regard to the other circumstances, then the door is open to the injection of personalities into this process. There are those in the school hierarchy in Natchitoches

Parish who do not like MRS. IVY. This is apparent by the fact that she was discharged but these other drivers have not been nor were drivers before her who were involved in even more serious accidents. There is no place in this process for personalities. The legislature enacted this statute to set forth a standard to be applied equally to all driver. It is submitted that if the present decision is allowed to stand, the legislative will is thwarted and equality under the law for school bus drivers will not be realized.